In the Matter of)
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Inter-Carrier Compensation) CC Docket No. 99-68
For ISP-Bound Traffic)
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COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY

I. Introduction

Cincinnati Bell Telephone Company ("CBT"), an independent, mid-size local exchange carrier, hereby submits these comments in response to the Commission's February 25, 1999 Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.[1] The NPRM seeks comment on a number of issues related to inter-carrier compensation for ISP-bound traffic. CBT's comments focus on the necessity of federal rules, the impossible task of separating interstate and intrastate ISP-bound traffic, the inequity of inter-carrier compensation for ISP-bound traffic and the need for immediate separations reform to account for ISP-bound traffic.

II. Federal Rules are Necessary

National rules are required to remove uncertainty and prevent countless and unnecessary state arbitrations and endless litigation. The Commission's tentative conclusion that any rates, terms and conditions for inter-carrier ISP-bound traffic be subject to negotiation between the parties and eventually subject to arbitration is not sound public policy. Such an approach would be wasteful of scarce resources for

[1] In the Matter of Declaratory ruling in CC Docket No. 96-98 and Notice of Propose Rulemaking in CC Docket No. 99-68, released February 26, 1999.

regulators and industry participants alike. Because the issues are so highly polarized, a policy that leaves compensation for ISP-bound traffic to negotiation will force every interconnection negotiation to arbitration, and ultimately to more litigation. To avoid several more years of uncertainty and litigation, the Commission should establish a federal policy that properly balances the public interest in maintaining the access charge exemption for ISP-bound traffic and the need to establish a compensation mechanism that is based on sound economic principles.

Arbitration without rules and guidelines is not the answer. It puts the entire industry on the path toward more litigation, more uncertainty, and less competition for local service. The Commission has correctly found ISP-bound traffic to be jurisdictionally interstate. It is now appropriate that the Commission put in place rules that encourage the growth of the Internet, rather than encouraging litigation.

III. Not Possible to Segregate Interstate and Intrastate ISP-Bound Traffic

From CBT's perspective, it is uneconomic and unreasonable to segregate interstate and intrastate ISP-bound traffic. The jurisdiction of a traditional call is determined during call set-up by identifying the calling party number and the called party number. However, for ISP-bound traffic, which does not terminate at the called number, the jurisdiction cannot be determined. Since the terminating location can change dynamically during a single Internet session, the jurisdiction can also change. Such an event cannot be identified by, and therefore, not recorded by the originating LEC. In the course of a single session between the end user and his designated ISP, the average end user is connected for thirty-six (36) minutes and accesses thirty-six (36) different sites[2]. Not knowing the physical location of particular websites, most end users will be unaware when they switch from interstate jurisdiction to intrastate jurisdiction and back again. The capability to constantly monitor and record jurisdictional changes does not exist in LEC networks. The Commission has already ruled that ISP-bound traffic is "jurisdictionally mixed and appears to be largely interstate"[3]. Therefore, ISP-bound traffic should be treated as interstate traffic and federal rules should apply.

The Commission also reaffirmed the ESP exemption from access charges. Thus LECs may not impose access charges on ISPs. Moreover, the FCC has directed states to permit ISPs to purchase their Public Switched Telephone Network (PSTN) links through local business tariffs. In doing so the Commission has exercised its jurisdiction over the ISP-bound traffic between the ISP and the LEC providing service to the ISP. But in the Commission's proposed conclusion, when ISP-bound traffic flows from one LEC to another before it is delivered to an ISP, the Commission seeks to avoid setting national policy concerning the traffic.

Since the Commission supports the continued growth of the Internet, its alternative proposal (i.e., to adopt a set of federal rules governing inter-carrier compensation for ISP-bound traffic), makes considerably more sense. A consistent, practical approach toward ISP-bound traffic will permit the Commission to track the growth. On the other hand, a fragmented approach where the states or independent arbitrators are permitted to rule concerning inter-carrier compensation may vastly disadvantage some regions of the

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[2] Internet Basics, Vol. 5 Issue 3, "Online Tidbits".

[3] In the Matter of Declaratory ruling in CC Docket No. 96-98 and Notice of Propose Rulemaking in CC Docket No. 99-68, released February 26, 1999, para. 1, page 2.

United States compared to others. A federal policy on compensation for ISP-bound traffic is absolutely necessary to create a national environment where the benefits of competition and emerging technologies are available ubiquitously.

IV. Inter-Carrier Compensation – Each Carrier Must Bear the Weight of the Access Charge Exemption

The Commission was clear that ISP-bound traffic is essentially interstate in nature, but exempt from access charges. A process currently exists to handle interstate traffic when two LECs are involved in delivering traffic originating from one LEC, traversing the network of a second LEC, and eventually handing it off to an interstate carrier who carries the traffic to its terminating destination. In voice telephony, that process is referred to as meet point billing. If a function takes place solely within one LEC's network, that LEC would collect its appropriate access charges from the IXC. If the function is jointly provided by the LECs (e.g., interoffice mileage), any revenues collected from the IXC are shared by each involved LEC on a proportional basis. In the case of ISP-bound traffic, there are no access revenues and very little, if any, other revenues to proportionally share among the LECs involved in transporting the call from the end user to the ISP, which carries the traffic to its destination. Both types of traffic, ISP-bound and interstate toll, may be carried by two or more LECs before the traffic is delivered to either an ISP or an IXC. There is no compensation between the LECs for the transport of interstate traffic to an IXC, but the Commission is now suggesting that there should be some sort of compensation for interstate ISP-bound traffic between LECs. Why?

The LEC whose end user originates the transmission is responsible for delivering that call to the LEC who serves the ISP. The originating LEC has incurred network costs to transport that call to the LEC who delivers that call to the ISP. Normally the LECs would be compensated through access charges. However, because of the FCC's exception for the Internet, each LEC must now be forced to bear the weight of the access charge exemption.

Today, essentially all of CBT's end user customers have flat rated monthly access lines. The amount of ISP-bound traffic has increased exponentially since the ISPs decided to flat rate monthly access fees. It would have been impossible to anticipate such growth in ISP-bound traffic and, therefore, the costs of those ISP-bound calls are not included in the flat rated monthly local access line. The only revenues associated with ISP-bound traffic are those associated with the access lines and trunks ordered by the ISP to the serving switch. The LEC with the serving switch incurs very little cost (e.g., the line or trunk termination) and collects all of the revenues from the ISP. The network costs incurred by the originating LEC are not recovered from anyone or anywhere. In cases where ISPs are no longer customers of the originating LEC and the network costs to deliver ISP-bound traffic to the serving switch are not included in the monthly cost of flat-rated local access lines,[4] which were designed to support voice traffic, any inter-carrier compensation paid to the terminating LEC would exacerbate this situation.

[4] In Cincinnati Bell Telephone's comments in CC Docket No. 96-263, filed March 24, 1997, CBT states that it's network is designed to handle, on average, calls of 6 to 10 minutes duration during the busy hour. In order to accommodate calls of longer duration, such as ISP calls, CBT will be forced to build additional interoffice trunks. As the usage on the network increases equipment reconfigurations are required. In addition to the trunking costs, CBT identifies the cost of reconfiguring the network to prevent blocking at the customer side of the switch at $1.00 per move for each line.

V. Separations Treatment for ISP-Bound Traffic

The Commission also seeks comment on the implications of various proposals regarding inter-carrier compensation for ISP-bound traffic on the separations regime, such as the appropriate treatment of incumbent LEC revenues and payments associated with the delivery of such traffic. Separations rules, as they are written today, default traffic that is neither interstate toll traffic nor intrastate toll traffic, to local. In light of the Commission's ruling in this docket that ISP-bound traffic is "essentially jurisdictionally interstate", the current separations rules are in need of immediate modification to move any revenues and expenses associated with ISP-bound traffic to the interstate jurisdiction. Cincinnati Bell has consistently taken the position that traffic to ISPs is interstate traffic. Consistent with industry practice, recognizing the inherent difficulties in identifying ISP traffic and in recognition of the current FCC policy permitting ISP's to purchase their links through intrastate business tariffs rather than through interstate access tariffs, for separations purposes this traffic has historically defaulted to local.

VI. Conclusion

The Commission should establish national standards addressing inter-carrier compensation for ISP-bound traffic and modify separations rules concerning this traffic at the earliest possible date.

Respectfully submitted,

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